HJR 153 FEASIBILITY STUDY
GENERIC QUESTIONS

RESPONSES OF
THE VIRGINIA CABLE TELECOMMUNICATIONS ASSOCIATION

1. Please identify the major issues/questions that should be addressed by the HJR153 feasibility study.

HJR153 refers to "utility lines" and "utility distribution lines" without defining either term. For purposes of this response, the VCTA assumes that these terms include cable operators' facilities. These facilities are capable of providing video programming and advanced services such as broadband Internet access and facilities-based telephone services. Even if these terms were not meant to include cable facilities directly, VCTA members would nevertheless be significantly affected by an "undergrounding" initiative because cable operators have attached their facilities to thousands of utility poles across the Commonwealth through agreements with utilities, including Dominion Virginia Power, American Electric Power and the electric cooperatives.

The major issues/questions that should be addressed by the feasibility study are (1) identifying the potential costs and benefits of such an undertaking and (2) weighing the costs and benefits to determine if the benefits outweigh the costs. The specific issues are addressed in the responses below.

2. Please describe the potential benefits to the public and utility companies associated with the undergrounding of overhead distribution lines.

Utility lines are subject to certain types of storm-related damage when placed above ground, such as wind damage caused by fallen tree limbs and ice damage. Although utility lines are subject to other damage when placed underground, there would be a reduction in certain types of storm-related damages and outages when such damage is caused by wind or ice. Also, undergrounding utility lines would also eliminate damage caused when poles are struck. Additionally, there are obvious aesthetic benefits to placing utility lines underground.

3. Please describe the potential negative impacts on the public and utility companies associated with the undergrounding of overhead distribution lines.

The potential negative impacts include:

1. Relocation Costs. The most obvious negative impact would be the cost required to relocate facilities underground. It is our understanding that the electric utilities have conducted studies in other states that show that the cost to "underground" their facilities, including utility "drop lines" from the poles to individual residences and business, would be staggering. Whatever their studies show, however, would not include the cost to relocate all of the other attachers on utility poles, including cable operators and other

telecommunications companies. These costs would also include the expense to obtain necessary rights-of-ways, a cost that has been greatly increasing. Those costs could greatly increase in cases where cable operators would have to seek their own agreements with landowners because the existing agreements that allow aerial attachments to utility poles would not often apply to underground installations. There are many other associated costs that are not so obvious. For example, in many areas of the Commonwealth, cable operators have attached power supplies to utility poles that enable customers to receive advanced services, such as broadband Internet access and competitive telephone service. It would be impractical to place all of these power supplies underground. Removing these power supplies from utility poles would require that cable operators place these power supplies on pedestals above ground.

2. Funding Relocation Costs. Given the enormous costs associated with an undergrounding program, the related negative impact is the funding of these costs. This issue is discussed further in response to question seven below. Regardless of how such a program were funded, however, citizens and consumers of utility-related services would ultimately pay increased costs for those services.

3. Increased Maintenance Costs, Repair Costs and Time to Repair. Although undergrounding utilities obviously eliminates damage from fallen tree branches, moving utility facilities underground creates an entirely different set of issues. First, underground utility lines and equipment are subject to damage due to a number of factors including, for example, water damage and accidental cuts while digging. Water in conduits can damage facilities, particularly in the winter when the water turns to ice. Secondly, identifying the source of a problem is much more difficult when facilities are underground. For example, a utility might be required to excavate a large area in order to identify the source of a problem. Given the difficulty in identifying problems in underground facilities, the time to identify and repair those problems would also likely increase. From a customer's perspective, undergrounding all utility lines might result in new delays in installations and restorations where those facilities are currently overhead.

4. Impeding Consumer Access to New Services. Many Virginia citizens are enjoying the benefits of cable's advanced services -- such as broadband Internet access, particularly in rural areas -- because cable operators are readily able to "overlash" new facilities to the existing lines they have attached to utility poles. The cost to upgrade facilities is obviously an important factor in a company's decision whether it can provide new services using new facilities. Undergrounding all utility lines would obviously eliminate the ability to overlash new lines to existing lines and substantially increase the cost to install new facilities. In the future, this could negatively impact the ability of Virginia's citizens to enjoy new advanced services because the cost to install new facilities would be higher if overlashing is no longer available.

5. Trenching Issues. Undergrounding all utility lines would require either joint trenching or multiple trenching. Although the utilities in Virginia have been working to resolve issues involved in joint trenching, there are a number of hurdles that must be

overcome to effectively joint trench, including coordination of work and cost-sharing. If utilities are unable to joint trench, the cost to underground facilities would obviously increase dramatically as each utility would be required to use its own trench.

6. Utility Crossings. Undergrounding facilities becomes particularly problematic when utilities must cross railways, rivers and streams and VDOT rights-of-ways. For example, undergrounding a utility line that crosses a stream would require boring under the stream. Additionally, boring under a stream would implicate a number of State and Federal regulatory requirements (such as so-called 'wetlands' environmental regulations) and permits that would also greatly increase the cost to underground such facilities. Similarly, relocating lines under a railway has significantly increased costs and burdens.

7. Increased "Miss Utility" Costs. With all utility lines placed underground, there would be significantly more "locates" that utilities would need to provide under the Underground Utility Damage Prevention Act -- at the utilities' expense. Also, the workload on the Notification Center would significantly increase, requiring additional personnel and facilities to perform their mission. These additional costs would be paid by utilities, again increasing the costs of an undergrounding initiative.

8. Aesthetics and the Related Inconvenience to Citizens. An undergrounding program would obviously involve an extensive trenching program that what cause inconvenience to citizens and, for some period of time, create a negative aesthetic appearance as roads and neighborhoods are dug up to place facilities underground. Even after the initial undergrounding program had ended, however, citizens would experience more inconvenience due to the maintenance of underground facilities, such as road cuts and the need to more frequently open trenches for maintenance and repairs. Additionally, as mentioned above, there are some facilities – such as power supplies – that cannot be practically buried and would be moved from a pole attachment to a pedestal on the ground.

9. Safety. Although the electric utilities are the companies best able to describe the increased safety concerns, it would appear that moving electric utility lines underground would present an increased safety hazard due to unintentional cuts while digging and also the increased risk posed by having both electric and gas lines underground.

4. Please describe in detail the potential obstacles associated with the implementation of a program to relocate overhead distribution lines to underground (for example, statutory, regulatory, technological, economic, safety, and physical obstacles).

A number of the potential obstacles associated with the implementation of an undergrounding program have been identified in the responses to the other questions.

5. Please describe the process for identifying and securing right-of-way easements for the relocation of existing overhead distribution lines to underground. What property rights issues would be raised as a result?

Securing right-of-way and similar easements to relocate cable facilities underground would create enormous transaction costs for cable companies. As an initial matter, cable companies would be required to undertake an ascertainment process whereby they would assess every 'inch' of their plant to determine which portions of the aerial plant are legally secured by easement or similar agreements. Then, those easements would need to be reviewed by legal counsel to determine whether those documents also permit the undergrounding of cable across the parcel covered by the easement. That ascertainment and legal review process would be lengthy and costly.

After that process concludes, cable companies would then be required to commence negotiations with each individual property owner to secure new or modified easements where necessary. There is no clearinghouse or similar 'bulk' process; each landowner would need to individually identified and contacted by the cable company. In many cases, the landowner might seek to extract additional compensation from the cable company. Some landowners, of course, would also 'hold-out' altogether, particularly if the landowner realizes its parcel is a valuable 'link' in a chain of parcels.

6. In order of importance, list the criteria that should be considered to determine whether the implementation of a program to relocate overhead distribution lines to underground is desirable.

The criteria are the benefits and costs discussed above. The most important criteria under "benefits" is the likely decrease in storm-related damage while the most important criteria under "negative impacts" is the economic cost of undergrounding, along with the increased transaction and maintenance costs and likely increase in response time for repairs.

7. In order of preference, describe the potential options for funding the relocation of overhead distribution lines to underground and explain the basis of your recommendation.

As stated below, the VCTA would not support a program to relocate all utility lines underground. If such a program were enacted, however, the "order of preference" for funding such a program would be, from most preferred to least preferred:

1. Government funded, either through direct funding or a special tax
2. Utility funded with costs passed directly to consumers.
3. Utility funded with costs passed indirectly to consumers.

8. Should one or more pilot programs be conducted to determine more precisely the benefits, costs and obstacles associated with the implementation of a program to relocate overhead distribution lines to underground? If pilot programs should be conducted, how could and should the pilot programs be funded?

It is unnecessary to conduct a "pilot program" because the participants in the feasibility study should be able to identify the benefits, costs and obstacles with sufficient precision to determine if such a program should be implemented.

9. Considering the costs, benefits and obstacles associated with the implementation of an undergrounding program, should the General Assembly require utilities to place all or a portion of existing and/or new overhead distribution lines underground? Alternatively, should such decisions be left to local government? Please explain your answer.

The General Assembly should not require "undergrounding" of utility lines for the reasons stated in these responses. In short, the potential benefits of undergrounding utility lines is greatly outweighed by the potential costs.

10. What obstacles, if any, currently prevent a local government from enacting an ordinance establishing all or a part of the locality as an area in which: (a) existing overhead utility distribution lines must be relocated underground over some period of time; and/or (b) all new utility distribution lines must be located underground?

A locality could enact an ordinance requiring the undergrounding of utility lines if it either has that authority or could obtain such authority from the General Assembly. As a practical matter, however, the major obstacle preventing a local government from enacting such an ordinance is likely the recognition that the cost to implement such a program is prohibitive.

11. For the specific purpose of funding the undergrounding of existing overhead utility distribution lines, what obstacles, if any, currently prevent a local government from levying a special tax on the residents and businesses of an area within the locality in which the local government has enacted an ordinance requiring the undergrounding of utility distribution lines? Would such a special tax assessment require specific new authorization from the General Assembly?

Where a locality currently does not have the authority to impose a "special tax," it could seek such authority from the General Assembly.

12. Interested parties are invited also to address all other legal and policy issues they believe relevant to this investigation.

As a matter of policy, the Commonwealth should not enact requirements that unfairly favor one competitor over another. For cable operators, the major competitor

for video programming is DBS, or "satellite" providers. Unless the Commonwealth is able is fully fund a requirement to relocate all utility lines, passing along such costs to cable's customers would disproportionately affect cable customers only. Also, the Commonwealth has supported efforts by cable operators and other companies to bring new telecommunications services, such as "broadband" high speed Internet access and facilities-based telephone competition to all of the Commonwealth. A requirement to relocate all utility lines would adversely affect the ability of cable operators to continue in their efforts to bring these new services to more citizens of the Commonwealth due to the "potential negative impacts" discussed above. For example, a requirement to underground all facilities would greatly increase the cost to provide new advanced services to very rural consumers, where the cost to bring such services is already very high.

Additionally, cable companies have numerous property rights, including easement and right-of-way rights, that would be "taken" if certain types of undergrounding initiatives were implemented. This raises the legal issue as to whether such a "taking" would be lawful without just compensation.

13. Please indicate below your desired level of participation in the feasibility study.

☒ **Placed on the distribution list for all correspondence.**
☒ **Considered as an active participant in the feasibility study. If you wish to be considered as an active participant, please complete the following:**

Field of expertise: Legal and policy implications of statutory and regulatory actions in areas affecting telecommunications.

Organization: Virginia Cable Telecommunications Association

14. If you are interested in participating as an active participant, would you be willing to serve also as a member of a subgroup to identify, research, and analyze specific issues and provide written summaries of specific topics of study?

☒ **Yes** ☐ **No**

15. Please provide the following contact information:

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16. Do you plan on attending the kickoff meeting in Richmond (specific location to be announced later) scheduled for 9:30 a.m., Monday, August 16, 2004?

☒ **Yes. Number of attendees representing your organization:** 1, Philip Boykin
☐ **No**